# CP- Title IX Regs

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#### Text: Public universities should create policies, reform current policies, and set strict harassment guidelines for classroom behavior for teachers and students in order to create an open learning environment. Regulations are consistent with Title IX and VII of the Civil Rights Act.

Dower, Benjamin. [Assistant Attorney General at Texas Attorney General] "Scylla of Sexual Harassment and the Charybdis of Free Speech: How Public Universities Can Craft Policies to Avoid Liability, The." Rev. Litig. 31 (2012): 703.

Sexual Harassment Policy for University Students¶ Students are prohibited from committing sexual harassment.¶ Sexual harassment for students is defined as:¶ (1) Words of a sexual nature directed at the person of the¶ addressee that, by their very utterance, inflict injury, provoke¶ resentment in the addressee, and tend to incite an immediate breach¶ of the peace. Breach of the peace, as contemplated by this provision,¶ is defined as public disorder that involves the outbreak of physical¶ violence.¶ (2) Unwelcome sexual advances, requests for sexual favors,¶ and other verbal or physical conduct of a sexual nature when¶ (a) submission to such conduct is made either¶ explicitly or implicitly a term or condition of an individual's¶ academic or employment status; or¶ (b) submission to or rejection of such conduct by an¶ individual is used as the basis for employment or academic¶ decision affecting such individual.¶ (3) Conduct of a sexual nature that is so severe and¶ pervasive-viewed both objectively and from the perspective of the¶ recipient of the remarks and considering the totality of the¶ circumstances-as to create a hostile learning environment.¶ Sexual Harassment Policy for University Employees¶ University employees are prohibited from committing sexual harassment.¶ Sexual harassment for university employees is defined as:¶ (1) Words of a sexual nature directed at the person of the addressee that, by their very utterance, inflict injury, provoke resentment in the addressee, and tend to incite an immediate breach of the peace. Breach of the peace, as contemplated by this provision, \*746 is defined as public disorder that involves the outbreak of physical violence.¶ (2) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when¶ (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s academic or employment status; or¶ (b) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decision affecting such individual.¶ ¶ (3) Conduct of a sexual nature that is so severe or pervasive--viewed both objectively and from the perspective of the recipient of the remarks and considering the totality of the circumstances--as to create a hostile learning environment.¶ ¶ Possible Addition¶ ¶ A university employee accused of sexual harassment stemming from speech conducted in the classroom may raise, as a defense, that his or her classroom expression was reasonably related to a legitimate pedagogical interest. If the employee is able to show by a preponderance of the evidence that his or her classroom expression was reasonably related to a legitimate pedagogical interest, the committee shall weigh the value of that interest against the harm of the alleged harassment in determining both guilt and punishment.¶

#### Successful lawsuits consistent with Title IX force school accountability to fight harassment.

**Silbaugh 15** [Silbaugh, Katharine [Law Alumni Scholar¶ BA magna cum laude, Amherst College¶ JD with high honors and Order of the Coif, University of Chicago]¶ . "Reactive to Proactive: Title IX's Unrealized Capacity to Prevent Campus Sexual Assault." BUL Rev. 95 (2015): 1049.]

In March of 2013, President Obama signed a re-authorization of the¶ Violence Against Women Act.97 Within the re-authorization were amendments¶ to the Clery Act, which requires educational institutions to disclose statistics¶ about the number of sexual assaults on campus in an annual report that must be¶ distributed to students and prospective students, engaging market pressures to¶ press universities into addressing sexual assault.98 The amendments to the¶ Clery Act (entitled the Campus Sexual Violence Elimination Act, or SaVE¶ Act)99 strengthen reporting requirements and go beyond DOE’s¶ “recommendation” that colleges educate staff and students to require¶ educational institutions to educate staff and students about campus sexual assault, including statements that sexual assault is prohibited, definitions of¶ sexual assault and consent, bystander tools, and awareness programs for new¶ students.100 The Clery Act is enforced by the DOE primarily through fines, but¶ it is not a part of Title IX. While the focus of the Clery Act remains the¶ accurate reporting of crimes, it will serve as a limited and defined mechanism¶ for getting colleges to introduce education and prevention strategies to¶ students. However, the Clery Act, unlike Title IX, does not mandate equality in¶ the provision of education; a school can check off requirements under the new¶ Clery Amendments without evaluating their efficacy or revising them toward¶ the particular goal of equal educational opportunity. Title IX has a far greater¶ capacity to address sexual assault prevention because colleges could be¶ compelled to take whatever reasonable steps can be shown to reduce assaults,¶ or combination of steps as research about efficacy continues to develop. The¶ DOE has the ability to develop a far more comprehensive approach to assault¶ prevention under Title IX than the specific prescriptions the Clery¶ Amendments mandate.¶ Does the Gebser framework constrain Title IX from doing prevention work?¶ Not for the DOE. To the contrary, the DOE has effectively used Title IX to¶ change campus culture more broadly already. Consider Title IX as the rest of¶ the world has: as sports law. Title IX applied pressure on institutions to offer¶ equality in programming and in the educational experience. Differences in¶ interest in participation couldn’t be offered as an excuse for noncompliance¶ with Title IX: if there was not a culture of sports for girls and women, schools¶ needed to create that culture to ensure equality.101 While it was not smooth¶ sailing throughout, schools largely achieved that cultural shift. This may have¶ been possible because relative to other institutions, schools are good creators¶ of culture. When schools first tried to say that they simply found the world as¶ is, with girls not wanting to participate in sports at the rate boys did, the DOE¶ pushed back. In response, schools became creative at expanding and¶ cultivating interest in sports among girls and women. The social change around¶ girls in sports resulted in large part from a charge to schools to cultivate that¶ change, taking concrete steps that would have the effect of changing cultural¶ dynamics. The colleges faced cultural resistance to change and allegations that¶ they were going too far in redesigning athletic programs and opportunities,102 much as colleges do today as they deliberate over the right sexual assault¶ prevention measures.103 But they demonstrated a powerful ability to transform¶ the culture and expectations of equality in sports participation.¶ Title IX operates primarily as a spending clause regulation overseen by the¶ DOE. The DOE should not have felt constrained by the doctrine developed to¶ address the individual cause of action. If poor reaction in response to an actual,¶ individual sexual assault can give rise to an individual cause of action, why¶ can’t high rates of sexual assault in a school’s population amount to sex¶ discrimination for purposes of DOE enforcement? If higher rates of assault¶ overall result when a school fails to take evidence-based steps to reduce the¶ overall rate of sexual assault, why wouldn’t the DOE nudge schools to be¶ proactive? What if schools have concrete tools at their disposal to reduce the¶ overall rate of assault? Isn’t that within the DOE’s enforcement purview?¶ Consider, by comparison, the legislative approach to school bullying. In the¶ past decade, nearly every state has passed laws addressing the obligations of a¶ school system to address incidents of bullying and to prevent bullying.104¶ While those statutes are aimed at both prevention and post-incident¶ intervention, the most recent and best-regarded statutes focus substantial¶ energy on requiring schools to deliver evidence-based bullying prevention¶ programming in an effort to reduce the amount of bullying within each¶ school.105 Prevention and culture change are at the core of these legal¶ interventions.106 Ideally, they would be at the core of the DOE’s approach to¶ Title IX’s guarantee of equal access to education on college campuses. Perhaps we are seeing the beginning of this exact reform: the DOE is¶ investigating schools, and, in turn, schools have stepped up their evaluations of¶ their own processes. If so, I would hope the next step will be a DOE guidance¶ on prevention measures, because to date, they’ve drawn colleges far into the¶ weeds on responses without adequately directing them toward prevention.

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